

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

KERRY MITCHELL,

Plaintiff,

vs.

CASE NO. 05-73037
HON. LAWRENCE P. ZATKOFF,

COMMISSIONER OF
SOCIAL SECURITY

Defendant.

**OPINION AND ORDER ADOPTING IN PART
MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION**

Plaintiff filed the instant action seeking Social Security disability insurance benefits. This matter is currently before the Court on Magistrate Judge Majzoub's Report and Recommendation of July 27, 2006, in which the Magistrate Judge recommends that Plaintiff's Motion for Summary Judgment be granted and Defendant's Motion for Summary Judgment be denied.

After a thorough review of the court file, the respective parties' motions, the Report and Recommendation, and the objection to the Magistrate Judge's Report and Recommendation filed by the Defendant, this Court will adopt the Report and Recommendation and enter it as the findings and conclusions of this Court, except as set forth immediately hereafter.

The Magistrate Judge found that the Defendant's failure to discuss the statements and opinions of Plaintiff's treating physician (Dr. Beltran) constituted on a *de minimis* violation of 20 C.F.R. §404.1527(d)(2), which provides that the Commissioner is to give "more weight to opinions from [the claimant's] treating sources, since these sources are likely to be the medical professionals most able to provide a detailed, longitudinal picture of [the claimant's] medical impairment(s)." The Court finds that the Commissioner's failure to consider the statements and opinions of Dr. Beltran in this matter was not "harmless error" but rather constituted "reversible error."

Therefore, IT IS HEREBY ORDERED that Defendant's Motion for Summary Judgment is DENIED. Plaintiff's Motion for Summary Judgment is GRANTED. Accordingly, this case is hereby REMANDED to the Defendant for further administrative proceedings so that the ALJ may properly address Plaintiff's credibility, the medical consultant's RFC assessment, the statements and opinions of Dr. Beltran and, if necessary, re-evaluate Plaintiff's RFC and conduct a new step four and five analysis.

IT IS SO ORDERED.

Dated: September 26, 2006

s/Lawrence P. Zatkoff
LAWRENCE P. ZATKOFF
UNITED STATES DISTRICT JUDGE